

APR 23 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO ALATORRE-FLORES,

Defendant - Appellant.

No. 02-10190

D.C. No. CR-01-00170-1-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted April 8, 2003**
San Francisco, California

Before: FERGUSON, McKEOWN, and RAWLINSON, Circuit Judges.

Mario Alatorre-Flores appeals the district court's order denying his motion to dismiss his indictment. In 1994, Flores pled guilty to transportation of three grams

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

of methamphetamine. In 1997, the INS initiated removal proceedings pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), asserting that Flores’ 1994 conviction constituted an aggravated felony.

Flores contested his removal, claiming that his prior conviction did not constitute an aggravated felony. The Immigration Judge disagreed and ruled that IIRIRA precluded Flores from seeking discretionary relief from deportation. Flores was subsequently deported. He was arrested in Arizona two years later and indicted for illegal reentry. Flores moved to dismiss the indictment, challenging the validity of his original deportation. The motion was denied and Flores is currently serving a three-year sentence.

Essentially, Flores argues two points in this appeal: 1) that his 1994 conviction did not constitute an aggravated felony, and 2) that he should not have been precluded from applying for discretionary relief from the original deportation order. Both arguments fail.

Flores’ 1994 conviction qualifies as an aggravated felony under 8 U.S.C. § 1101(a)(43)(B). This trafficking offense is defined by the California Health and Safety Code § 11379(a), which also encompasses certain solicitation crimes not qualifying as aggravated felonies. However, Flores specifically pled guilty to transportation, not solicitation. In addition, Flores’ knowledge of the presence of

the methamphetamine at the time of his arrest is reflected in the record.

Accordingly, Flores' conviction qualifies as an aggravated felony.

Flores may not appeal his preclusion from seeking discretionary relief because he

failed to exhaust all administrative remedies on this issue, see United States v.

Garza-Sanchez, 217 F.3d 806, 808 (9th Cir. 2000), and he cannot establish that the

deportation order improperly deprived him of judicial review or was

fundamentally unfair.

AFFIRMED as to the judgment of conviction and sentence and **DISMISSED** as

to the collateral attack on the deportation.